

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2013-003800

04/26/2013

HONORABLE KATHERINE COOPER

CLERK OF THE COURT  
D. Harding  
Deputy

CHARLES RODRICK, et al.

DANIEL R WARNER

v.

DAVID MICHAEL ELLIS, et al.

RICK POSTER

RANDAL HUTSON  
JOE M ROMLEY

RULING MINUTE ENTRY

The Court has reviewed Plaintiffs/Counter-Defendants' Motion to Dismiss Counterclaims of Defendants/Counter-Claimants Graingers, filed March 4, 2013; Defendant Graingers' Answer, Counterclaim, filed February 28, 2013; and Plaintiffs' Reply, filed March 22, 2013.

Plaintiffs moves to dismiss Defendant Graingers' counterclaims.

Plaintiff Rodrick has a website, offendex.com, that archives criminal records of convicted sex offenders.

Defendant Gordon has a website, offendextortion.com, that Plaintiffs allege is for the purpose of defaming and harassing them.

**Defendant Leanne Grainger's Counterclaims:**

**Count 1 - Invasion of privacy.** For this claim, Defendant must show 1) intentional intrusion, physical or otherwise, on her solitude, private affairs, or concerns; 2) an objectively reasonable expectation of seclusion or solitude; and 3) that the intrusion would be highly offensive to a reasonable person. Restatement (Second) of Torts §652B; *Med. Lab. Mgmt. Consultants v. Am. Broad. Cos.*, 30 F.Supp.2d 1182, 1188–89 (D.Ariz.1998). The Counterclaim

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alleges that Plaintiff invaded Leanne's privacy by republishing a link to her Facebook (FB) page, adding her to Plaintiff's FB friends, and placing her personal phone number on Plaintiff's website.

The Court finds no reasonable expectation of privacy in a public FB page, including the information that a person posts on that page. The public has access to that information, whether through Facebook or a link posted on another site.

There is, however, a reasonable expectation of privacy in a private phone number. The Counterclaim properly states a claim for invasion of privacy for publication of a private phone number.

Leanne Grainger's Counterclaim does not state a claim for appropriation of name or likeness. Therefore, the Court makes no ruling on a purported claim by Leanne for appropriation of her name or likeness.

**Count II – Infliction of Emotional Distress and False Light.** The elements of a claim for infliction of emotional distress are 1) a person's "extreme" and "outrageous" conduct; 2) intent to cause emotional distress or reckless disregard of the near certainty that such distress will result from the conduct; and 3) severe emotional distress as a result of the conduct. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987); Restatement (Second) of Torts § 46 (1965).

The elements of a claim for false light invasion of privacy are knowingly or recklessly publishing false information or innuendo about a person that a reasonable person would find highly offensive. *Godbehere v. Phoenix Newspapers, Inc.*, 162 Ariz. at 338, 783 P.2d at 784 (quoting Restatement § 652E).

Leanne alleges that Plaintiff "placed and published false statements about Leanne indicating that she was part of a smear campaign...which placed her in a false light in the public eye;" that Plaintiff's "actions were wonton and malicious and in total disregard for [her] safety;" and that she "suffers from lack of sleep, uncontrollable nightmares in fear for the safety of her child Leo, and loss of appetite."

In considering a motion to dismiss, all material allegations of the complaint (or counterclaim) are considered to be true and read in the light most favorable to the plaintiff. *Mohave Disposal, Inc., v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996). The Counterclaim here adequately pleads infliction of emotion distress and false light invasion of privacy. Plaintiff asks the Court to rule that the information he posted cannot support a claim for infliction of emotional distress or false light invasion of privacy as a matter of law. Based on the

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pleadings, the request is denied. Plaintiff may raise these issues in a motion for summary judgment following discovery relevant to these issues.

**Gordon Granger's counterclaims:**

**Count 1 – Infliction of Emotional Distress.** Gordon's alleges that Plaintiff sent threatening emails and posted embarrassing and defamatory statements about Defendant. It further alleges that Plaintiff "intended to create ridicule and contempt and...hatred toward the defendant Gordon" by placing Defendant's FB friends on Plaintiff's website and sending a threatening email with a picture of Defendants' infant son. Defendant alleges that these events caused shame, intimidation, and fear ; and that, as a result, he has experienced depression and mental anguish.

Defendant has sufficiently pled the elements of a claim for infliction of emotional distress.

**Count II – Copyright Infringement.** The Counterclaim does not allege any legal basis for copyright protection of a FB picture or personal photograph. Further, Section 301 of the Copyright Act preempts legal or equitable rights granted by state common law or statute that are equivalent to copyright.

**Count III – Right to Publicity.** Based on the information presented in the pleadings, the Court finds that Arizona has tacitly acknowledged the claim of appropriation of name or likeness. See *Godbehere v. Phoenix Newspapers*, 162 Ariz. 335, 783 P.2d 781 (1989). Defendant can bring a claim for the use of his name or likeness, but not for the use of his son's or another person's name or likeness. The Counterclaim adequately states a claim by Defendant for the use of his name and photograph under this theory.

**Count IV – Extortion.** Extortion is a criminal offense. A.R.S. § 13-1804. Arizona does not recognize a civil claim for "extortion."

**IT IS HEREBY ORDERED** granting Plaintiffs' Motion to Dismiss as to Counts II (Copyright Infringement) and IV (Extortion) of Gordon Grainger's Counterclaims only.

**IT IS FURTHER ORDERED** denying the motion as to the remaining claims.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.